

Message

From: Chin, Lucita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA404E3F56574242AEE0811A07E309FC-CHIN, LUCITA]
Sent: 6/19/2017 1:24:36 PM
To: Shea, Valois [Shea.Valois@epa.gov]; Minter, Douglas [Minter.Douglas@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]
CC: Perkins, Erin [Perkins.Erin@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]
Subject: FW: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

ATTORNEY-CLIENT PRIVILEGE

Ex. 5 AC/AWP

Lucita Chin
Associate Regional Counsel
Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202
Office: (303) 312-7832

From: Wehling, Carrie
Sent: Monday, June 19, 2017 7:14 AM
To: Chin, Lucita <Chin.Lucita@epa.gov>
Subject: RE: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

Ex. 5 AC/AWP

Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Chin, Lucita
Sent: Monday, June 19, 2017 8:58 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: FW: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

Ex. 5 AC/AWP

functional equivalence and give her the OGC memo from 1979 on this subject, or do we just point her to the regs and leave it at that?

Lucita Chin
Associate Regional Counsel
Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202
Office: (303) 312-7832

From: Shea, Valois
Sent: Friday, June 16, 2017 4:08 PM
To: Nancy [Ex. 6 Personal Privacy (PP)]; Hoppe, Allison <hoppe.allison@epa.gov>
Cc: Chin, Lucita <Chin.Lucita@epa.gov>
Subject: RE: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

Hi Nancy,
I don't know the FR notice that explains the legal reasoning behind this. I think Allison is in our HQ office where it is 2 hours later. But perhaps she can reply on Monday in time for you to finalize your comments. I have also copied our Region 8 UIC attorney who is also familiar with this issue and may also be able to give you the reference. She will arrive early Monday morning – usually around 6:00am.

Valois

Valois Shea
U.S. EPA Region 8
MailCode: 8WP-SUI
1595 Wynkoop Street
Denver, CO 80202-1129
Phone: (303) 312-6276
Fax: (303) 312-6741
Email: shea.valois@epa.gov

From: [Ex. 5 Attorney Client (AC)]
Sent: Friday, June 16, 2017 3:45 PM
To: Hoppe, Allison <hoppe.allison@epa.gov>; Shea, Valois <Shea.Valois@epa.gov>
Cc: Nancy Hilding <nihilshat@rapidnet.com>
Subject: Dewey Burdock Mine Permit- Federal Register review of EPA's CRF 40 CFR 124.9 (b) (6)

Nancy Hilding
President Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
June 16, 2017
nihilshat@rapidnet.com

Dear Allison Hoppe and Valois Shea,

RE: Rule creation for EPA's CRF 40 CFR 124.9 (b) (6)

Can either of you give me the publication date for the Federal Register Notice of publication of the CFR rule set that CRF 40 CFR 124.9 (b) (6) belongs within. This rule exempts EPA permitting via underground injection control (UIC) from NEPA.

I wish to see the justifications for adoption of this rule set and that would normally be explained in a preamble for the rule in the Federal Register, when it was adopted.

I ask for this information to help write my comments on Dewey Burdock In-situ Leach Application.

I wish to understand which legal argument EPA uses to exempt itself from NEPA for UIC.

As I understand it courts have exempted agencies from the procedural requirements under NEPA where the court thinks that either:

- (1) a direct conflict between NEPA and the organic statute authorizing agency action exists, or
- (2) NEPA procedures will be redundant with those provided for under the organic statute due to either displacement or functional equivalence.

I ask that you fully disclose those legal arguments in your final permit documents... fully explain how and why EPA chose to pass CFRs exempting itself from NEPA for UIC. Please fully disclose which legal rationale you tier to. If it is "functional equivalence"; we believe you need to show how you are achieving "functional equivalence" or have redundant procedures to NEPA.

Thanks,

Nancy Hilding

Nancy Hilding
President
Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
nhilshat@rapidnet.com
phas.wsd@rapidnet.com
www.phas-wsd.org

Ex. 6 Personal Privacy (PP)

Skype phone -787-1248, nancy.hilding

Ex. 6 Personal Privacy (PP), cell account is not activated and it does not accept text/voice mail,